

U.S. Patent Application Serial No. 10/796,691  
Third Amendment and Response to Non-Final Office Action  
Page 11

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### REMARKS

Prior to the present Amendment and Response to Non-Final Office Action ("Response"), Claims 1-2, 4-24 and 73-82 were pending. In this Response, applicants cancel Claims 1-2, 4-24, 73-75 and 78-80, amend Claims 76, 77, 81 and 82, and add new Claims 83-128. The claim amendments and the new claims do not introduce any new matter. Claims 76-77 and 81-128 will be pending after entry of the amendments and new claims.

#### Rejection of Claims under 35 U.S.C. §102(b) as Anticipated by Clay and under 35 U.S.C. §102(b) as Anticipated by Durbin

The Examiner rejects Claims 1-2, 4-24 and 73-75 under 35 U.S.C. § 102(b) as anticipated by Clay *et al.* (1999) "Formation of apolipoprotein-specific high-density lipoprotein particles from lipid-free apolipoproteins A-I and A-II." *Biochemical Journal*, v. 337, pp. 445-451 (hereinafter "Clay"). The Examiner also rejects Claims 1-2, 4-24, and 73-75 under 35 U.S.C. § 102(b) as anticipated by Durbin and Jonas (1999) "Lipid-free apolipoproteins A-I and A-II promote remodeling of reconstituted high density lipoproteins and alter their reactivity with lecithin:cholesterol acyltransferase." *Journal of Lipid Research*, v. 40, pp. 2293-2303 (hereinafter "Durbin"). In this Response, applicants cancel Claims 1-2, 4-24, and 73-75, thereby rendering their rejections moot. Applicants request withdrawal of the rejection of Claims 1-2, 4-24, and 73-75 under 35 U.S.C. § 102(b) as anticipated by Clay and withdrawal of the rejection of Claims 1-2, 4-24, and 73-75 under 35 U.S.C. § 102(b) as anticipated by Durbin.

In the Office Action mailed March 31, 2006, the Examiner did not reject Claims 76-82 as anticipated by Clay or Durbin. Accordingly, in this Response applicants add new independent Claim 103 based, for example, on Claims 13 and 76 and reciting apolipoprotein C-III, apolipoprotein D or apolipoprotein E. Applicants also add new independent Claim 116 based, for example, on Claims 13 and 77, and reciting triglycerides

*U.S. Patent Application Serial No. 10/796,691*  
*Third Amendment and Response to Non-Final Office Action*  
*Page 12*

or fatty acids. New dependent Claims 83-92 (base Claim 76) and 93-102 (base Claim 77) are supported, for example, by previously pending, now cancelled Claims 2 and 4-12. New dependent Claims 104-114 (base Claim 103) and 117-127 (base claim 116) are supported, for example, by previously pending, now cancelled Claims 14-24. New dependent Claims 115 (base Claim 103) and 128 (base Claim 116) are supported, for example, by previously presented Claims 81 and 82.

### **Double Patenting**

The Examiner maintains a provisional rejection of Claims 74 and 75 under the doctrine of obviousness-type double patenting over Claims 73-78 and 80 of a co-pending U.S. Patent Application Serial No. 10/996,570 (hereinafter "'570"). The Examiner also raises provisional obviousness-type double patenting rejections of Claims 75 and 80-82 of the present application over Claims 73-78, 80 and 85-90 of '570, and of Claims 1, 8, 13 and 76-79 of the present application over Claims 91-93 of '570. In this Response, applicants cancel Claims 1-2, 4-24, 73-75 and 78-80, thereby rendering moot the provisional obviousness-type double patenting rejection of Claims 1, 8, 13, 74, 75 and 78-80. If the provisional rejection of Claims 76-77 and 81-82 applies when allowable subject matter is found, applicants will address this rejection by filing an appropriate terminal disclaimer.

### **Rejection of Claims under 35 U.S.C. §102(e) as Anticipated by Zhu**

The Examiner rejects Claims 1-2, 4-24 and 73-82 under 35 U.S.C. § 102(e) as anticipated by Zhu *et al.*, U.S. Patent Application Publication No. US2004/0106556 (hereinafter "Zhu"). Applicants respectfully traverse the rejection.

Zhu is a publication of U.S. Patent Application No. 10/650,110, filed August 26, 2003, which claims a priority date of August 26, 2002, based on the underlying Provisional Application Serial No. 60/405,922. The present application was filed March 8,

*U.S. Patent Application Serial No. 10/796,691*  
*Third Amendment and Response to Non-Final Office Action*  
*Page 13*

2004, but claims a priority date of July 3, 2003, based on the underlying Provisional Application 60/484,690. All of the above applications are assigned to Lipid Sciences, Inc.

The Examiner asserts that the composition claims of the present application are anticipated by Zhu because Zhu discloses delipidated particles comprising high-density lipoproteins. To support the above assertion, the Examiner cites several passages of Zhu. In particular, the Examiner cites the following passages of Zhu that mention delipidated particles: section 0009; section 0010, which mentions delipidated particles in line 2 and in the last sentence in lines 11-14; section 0014; and section 0040.<sup>1</sup> The Examiner also cites Table 1 on page 9 of Zhu, which presents the data from two pigs, and section 0107, which contains the discussion of Table 1. The Examiner emphasizes Table 1 and section 0107 as the most important on p. 10, first line of the first full paragraph, of the Office Action.

Applicants bring to the Examiner's attention that none of the passages of Zhu discussed above was present in the Provisional Application Serial No. 60/405,922, to which Zhu claims priority. Therefore, all of the passages of Zhu discussed above have a priority date of August 26, 2003, the same as the filing date of Zhu, and not the priority date of August 26, 2002, based on the provisional application. Accordingly, the passages of Zhu discussed above have a priority date of August 26, 2003, that is later than the priority date of the present application. Thus, the above passages cannot be used to support a rejection under 35 U.S.C. § 102(e). In view of the foregoing, applicants request withdrawal of the rejection of Claims 1-2, 4-24 and 73-82 under 35 U.S.C. § 102(e) as anticipated by Zhu.

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<sup>1</sup> The following passages of Zhu, also cited by the Examiner, do not discuss or mention delipidated particles: Section 0010, except for line 2 and in the last sentence on lines 11-14; section 0011; section 0032; section 0033; sections 0034 through 0036; section 0065; and section 0066 (the Examiner refers to it as "006" in error), lines 18-20.

*U.S. Patent Application Serial No. 10/796,691*  
*Third Amendment and Response to Non-Final Office Action*  
*Page 14*

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SEP 28 2006

### CONCLUSION

The foregoing is submitted as a full and complete response to the Non-Final Office Action mailed March 31, 2006. No additional fees are believed due, however, the Commissioner is hereby authorized to charge any deficiencies which may be required or credit any overpayment to Deposit Account Number 11-0855.

Applicants assert that the claims are in condition for allowance and respectfully request that the application be passed to issuance. If the Examiner believes that any informalities remain in the case that may be corrected by Examiner's amendment, or that there are any other issues which can be resolved by a telephone interview, a telephone call to the undersigned agent at (404) 815-6102 or to Dr. John McDonald at (404) 745-2470 is respectfully solicited.

Respectfully submitted,



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